

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	Docket No. RCRA-08-2003-0001
)	
U.S. Department of Interior)	CONSENT AGREEMENT
Bureau of Indian Affairs,)	
Great Plains Region and)	
Standing Rock Agency)	
)	
(Ft. Yates Law Enforcement Facility)	
BIA Standing Rock Agency)	
Proposal Avenue, Building 51)	
Ft Yates, ND 58538))	
)	
Respondents.)	
_____)	

Complainant, United States Environmental Protection Agency, Region 8 (“EPA”) , and Respondent, U.S. Department of Interior, Bureau of Indian Affairs (“BIA”) (hereafter referred to collectively as “the Parties”), by their undersigned representatives, hereby consent and agree as follows.

FACTUAL AND PROCEDURAL BACKGROUND

1. On April 1, 2003, Complainant issued Respondent a Complaint and Notice of Opportunity for Hearing (“Complaint”) alleging certain violations of subtitle I of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6991-6991i, and the federal underground storage tank (“UST”) regulations codified at 40 C.F.R. part 280. The Complaint proposed a civil penalty for the violations alleged.

2. Subsequent to filing the Complaint, EPA learned of additional UST violations at the Respondent’s Fort Yates Road Shop facility, similarly located on the Standing Rock Sioux Indian Reservation. The violations were originally identified during a facility inspection in the summer, 2002. During the negotiation of this Consent Agreement, Complainant informed Respondent that it intended to enforce the Road Shop violations. The parties agreed to include settlement of those violations in this Consent Agreement.

3. Respondent admits the jurisdictional allegations of the Complaint and the Consent

Agreement and neither admits nor denies the specific factual allegations of the Complaint and the Consent Agreement.

4. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or the Consent Agreement.

5. This Consent Agreement contains all terms of the settlement agreed to by the Parties. Upon incorporation into a final order, this Consent Agreement applies to and is binding upon Respondent, its officers, directors, employees, agents and all persons acting under or for Respondent, until such time as the civil penalty required under paragraph no. 7 has been paid and the Supplemental Environmental Projects (“SEPs”) referenced in paragraph no. 12 are fully performed, and any delays in performance and/or stipulated penalties have been resolved. This Consent Agreement upon incorporation into a final order shall constitute full civil settlement of the violations alleged in the Complaint and the additional alleged UST violations identified in paragraph no. 2 above. Any change in the operating status of the facilities at the Standing Rock Agency, including a contract or a grant under the Indian Self-Determination Act, 25 U.S.C. § 450f (also known as “638 contract”), shall not alter Respondent’s responsibilities under this Consent Agreement.

6. Respondent’s Ft. Yates Law Enforcement Facility is currently in compliance with RCRA subtitle I , 42 U.S.C. §§ 6991-6991i, and the federal UST regulations codified at 40 C.F.R. part 280.

7. Pursuant to section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), the nature of the violations, Respondent's agreement to perform supplemental environmental projects (“SEPs”) and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of sixteen thousand nine hundred forty-three dollars (\$16,943).

TERMS OF SETTLEMENT

Civil Penalty

8. Respondent consents to the issuance of the Consent Agreement and consents, for the purposes of settlement and without admitting any of the allegations in the Complaint not heretofore admitted, to the payment of the civil penalty cited in paragraph no. 7 above and to the performance of the SEPs identified in paragraph no. 12 below.

9. Within forty-five (45) days after Respondent's receipt of a signed final order in this matter, Respondent shall make payment by Funds Transfer Deposit (EPA Form 2570-6) through the Federal Reserve Communication System to the account of the U.S. Treasury at the Federal Reserve Bank of New York in the amount of sixteen thousand nine hundred forty-three dollars (\$16,943).

10. A copy of EPA Form 2570-6 shall be simultaneously provided to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 19th Street, Suite 300
Denver, Colorado 80202-2466

and to:

Amy Swanson, Attorney
Legal Enforcement Program (8ENF-L)
U.S. EPA Region 8
999 19th Street, Suite 300
Denver, Colorado 80202-2466

11. Respondent agrees and consents that if it fails to pay the penalty amount on the due date set forth in paragraph no. 9 above, interest on the penalty amount shall accrue at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. A late payment charge of twenty dollars (\$20.00) shall be imposed after the first 30 days that the payment, or any portion thereof, is overdue, with an additional charge of ten dollars (\$10.00) imposed for each subsequent 30-day period until the payment due is made. In addition, an interest rate of six percent (6%) annum per penalty shall be applied on any principal amount not paid within ninety (90) days after receipt of the final order.

Supplemental Environmental Projects

12. Description of the SEPs

a.. Respondent shall undertake the performance of the SEPs described in the SEP Proposal, attached hereto as Exhibit A and incorporated herein by reference, which the Parties agree are intended to promote significant environmental protection and compliance. The SEP Proposal sets forth a detailed description of each SEP, SEP-completion schedule, and cost estimates.

b. Respondent shall complete the SEPs in accordance with the terms and

conditions outlined in the SEP Proposal but no later than two years from the date of the final order.

13. The total expenditure for the SEPs shall be no less than \$26,000 in accordance with the specifications set forth in the SEP Proposal. Respondent shall provide Complainant with documentation of the expenditures made in connection with the SEPs as part of the SEP Completion Report described below in paragraph no. 16a.

14. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEPs by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEPs by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEPs.

15. Any public statement, oral or written, made by Respondent making reference to the SEPs shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of RCRA."

16. SEP Reports

a. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days following completion of the final SEP. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP(s) as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks, or the equivalent of;
- (iv) Certification that the SEPs have been fully implemented pursuant

to the provisions of this Consent Agreement; and

- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

b. Respondent shall submit a SEP Status Report within six (6) months after the date of the final order in this matter. The SEP Status Report will include a progress report of SEPs implemented during the reporting period; problems encountered and solutions implemented; planned activities for the next six (6) months; and itemized costs incurred during the reporting period. Subsequent SEP Status Reports including the same information detailed above shall be submitted every six months thereafter until the final SEP is completed.

c. Respondent agrees that failure to submit the SEP Completion Report or SEP Status Reports shall be deemed a violation of this Consent Agreement and Respondent shall become liable for stipulated penalties in accordance with paragraph no. 19 below.

d. Respondent shall submit all notices and reports required by this Consent Agreement by regular mail to:

Lisa Luebke
Underground Storage Tank Program (8P-W-GW)
U.S. EPA Region 8
999 19th Street, Suite 300
Denver, Colorado 80202-2466

17. Respondent shall maintain legible copies of the research and data underlying any and all documents or reports submitted to EPA pursuant to this Consent Agreement. Respondent shall provide the documentation of any such underlying research and data to EPA within seven (7) days of a request for such information. In all documents or reports including the SEP

Completion Report submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

18. EPA acceptance of SEP Reports.

a. Following receipt of the SEP Completion Reports described in paragraph no. 16(a) above, EPA will do one of the following: (i) accept the SEP Completion Report; (ii) reject the SEP Completion Report, notify the Respondent in writing of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days in which to correct any deficiencies; or (iii) reject the SEP Completion Report and seek stipulated penalties in accordance with paragraph no. 19 below.

b. If EPA elects to exercise option (ii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days to reach agreement from the receipt by the EPA of the notification of objection. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent, which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement. In the event the one or more SEP is not completed as contemplated herein as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph no. 19.

Stipulated Penalties and Late Fees

19. In the event that Respondent fails to comply with any of the terms or

provisions of this Agreement relating to the performance of the SEP(s) described in paragraph no. 12 above and/or to the extent that the actual expenditures for the SEP(s) do not equal or exceed the total SEP expenditure described in paragraph no. 13 above, Respondent shall be liable for payment or stipulated penalties as follows:

- a. Except as provided in subparagraph (b) below, Respondent agrees to make a cash payment in the amount of \$26,000, less the EPA-approved amount already expended on SEPs, and pay a stipulated penalty in the amount of \$1,000 to the U.S. Treasury within thirty (30) days of written demand by EPA if the SEPs are not satisfactorily completed by the deadline of two years from the date of the final order.
- b. If the SEPs are not completed satisfactorily but Respondent made good faith and timely efforts to complete the projects and certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEPs, Respondent shall not pay any stipulated penalty.
- c. If the SEPs are satisfactorily completed, but Respondent spent less than the SEP minimum stated paragraph no. 13, Respondent shall pay the outstanding amount to the U.S. Treasury within thirty (30) days upon written demand by EPA.
- d. For failure to submit the SEP Completion Report required by paragraph no. 16(a) above, Respondent shall pay to the U.S. Treasury within thirty (30) days of written demand by EPA a stipulated penalty in the amount of \$150 for each day after the SEP Completion Report was originally due until the date that the SEP Completion Report is submitted.
- e. For failure to submit the SEP Status Report(s) required by paragraph no. 16(b) above, Respondent shall pay to the U.S. Treasury within thirty (30) days of written demand by EPA a stipulated penalty in the amount of \$100 for each day after the report was originally due until the report is submitted.

20. The determinations of whether the SEPs have been satisfactorily completed

and whether Respondent has made a good faith, timely effort to implement the SEPs shall be in the sole discretion of EPA.

21. Stipulated penalties for subparagraphs (d) - (e) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

22. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph nos. 9 and 10. Interest and late charges shall be paid as stated in paragraph no. 11.

GENERAL PROVISIONS

23. The Parties agree to resolve all disputes regarding the provisions of this Consent Agreement through dispute resolution proceedings as defined and governed by 5 U.S.C. Section 571 et seq., in recognition that timely resolution of disputes is essential to project completion and the overall goal of environmental compliance. All disputes arising under this Agreement that cannot be resolved informally amongst the Parties shall be submitted to a neutral available through the Federal Mediation and Conciliation Service or other available DOI or EPA agency dispute resolution techniques. The term “dispute” is intended to be interpreted broadly, including but not limited to disagreements over responsibilities, cleanup, and time periods. Reimbursement of and general compensation for the neutral shall be paid equally by all Parties involved in each individual dispute referred for resolution.

24. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEPs under the terms of this Consent Agreement.

25. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with RCRA and its implementing regulations.

26. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with a collection action instituted

as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

27. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement.

28. The Parties agree to submit this Consent Agreement to the presiding officer with a request that it be incorporated into a final order.

29. Each party shall bear its own costs and attorneys fees in connection with this matter.

30. This Consent Agreement, upon incorporation into a final order by the presiding officer and full satisfaction by the Parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint and the additional violations alleged herein in paragraph no. 2.

31. This Consent Agreement shall become effective upon filing with the presiding officer.

SO CONSENTED TO AND AGREED:

UNITED STATES DEPARTMENT OF THE
INTERIOR, BUREAU OF INDIAN AFFAIRS,

Respondent.

Date: 8-25-03

By: SIGNED
Terrance Virden, Director
Bureau of Indian Affairs

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 8/18/03

By: **Michael T. Risner**
Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 8/19/03

By: **SIGNED**
Sharon Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **U.S. DEPARTMENT OF INTERIOR, BIA FT. YATES LAW ENFORCEMENT FACILITY, DOCKET NO.: RCRA-08-2003-0001** was filed with the Regional Hearing Clerk on August 27, 2003.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on September 2, 2003 to:

Stephen L. Simpson, Attorney
U. S. Department of Interior
Office of the Solicitor, Division of Indian Affairs
1849 C Street, N.W. (Mailstop 6456)
Washington, DC 20240

September 2, 2003

SIGNED

Tina Artemis
Regional Hearing Clerk

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON AUGUST 27, 2003.